



4337-15-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

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Confederated Tribes of the Chehalis Reservation Liquor Ordinance; Repeal and Replace

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Confederated Tribes of the Chehalis Reservation Liquor Ordinance. The Ordinance certifies the Confederated Tribes of the Chehalis Reservation's Liquor licensing laws to regulate and control the possession, sale, and consumption of liquor within the jurisdiction of the Confederated Tribes of the Chehalis Reservation. The Ordinance repeals and replaces the previous liquor control ordinance published in the *Federal Register* on July 17, 1995 (60 FR 36564), and any and all previous statutes.

DATES: This Ordinance takes effect [Insert date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Mr. Greg Norton, Tribal Government Specialist, Northwest Regional Office, Bureau of Indian Affairs, 911 NE 11th Avenue, Portland, OR 97232, Phone: (503) 231-6702; Fax: (503) 231-2201.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83-277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice v. Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish

in the *Federal Register* notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary–Indian Affairs. I certify that the Confederated Tribes of the Chehalis Reservation adopted Resolution Number: 2019-025 (Liquor Control Ordinance) on February 26, 2019. The statute repeals and replaces the previous liquor control ordinance published in the *Federal Register* on July 13, 2010 (60 FR 36564).

Dated: June 6, 2019.

Tara Sweeney,
Assistant Secretary–Indian Affairs.

Chapter 9.40

LIQUOR CONTROL

9.40.010 Public policy declared.

This Ordinance is authorized and approved pursuant to Article IV, Section 1 and Article V, Section 1(h) and 1(i) of the Constitution and Bylaws of the Confederated Tribes of the Chehalis Reservation.

This Tribal Liquor Control Ordinance shall be cited as the “Chehalis Tribal Liquor Control Ordinance” (the “Ordinance”). Under the inherent sovereignty of the Confederated Tribes of the Chehalis Reservation (the “Tribe”), this chapter shall be deemed an exercise of the Tribe’s power for the protection of the welfare, health, peace, morals and safety of the members of the Tribe. It is further the Tribe’s policy to assure that any transaction, manufacture, importation, distribution, sale or consumption

involving an alcoholic beverage, while within the Tribe's jurisdiction, shall occur in strict compliance with this chapter, the laws of the United States and where applicable, the State of Washington.

9.40.020 Definitions.

The stated terms are defined as follows:

"Alcoholic beverage" shall mean any intoxicating liquor, beer or any wine, as defined under the provisions of this chapter or other applicable law;

"Legal age" shall mean the age requirements, as defined in CTC 9.40.080.

"Sale" shall mean the serving of any contents of any bagged, bottled, boxed, canned or kegged alcoholic beverage by any means whatsoever for a consideration of currency exchange

9.40.030 General prohibition.

It shall be a violation of Tribal law to manufacture for sale, to sell, offer or keep for sale, possess, transport or conduct any transaction involving any alcoholic beverage except in compliance with the terms, conditions, limitations, and restrictions specified in this chapter

9.40.040 Tribal control of alcoholic beverages.

The Business Committee shall have the sole and exclusive right to authorize the manufacture of alcoholic beverages, including distilleries, breweries, wineries and cideries, within or importation of alcoholic beverages into the Chehalis Reservation and Indian Country over which the Chehalis Tribe has jurisdiction for sale or for the purpose of conducting transactions therewith, and no person or organization shall so manufacture such alcoholic beverages within or import any such alcoholic beverages into the Chehalis

Reservation or Indian Country over which the Chehalis Tribe has jurisdiction unless authorized by the Business Committee to do so.

9.40.050 Community on-site sales.

The Business Committee shall establish and maintain within the Chehalis Reservation a casino, including full-service restaurant, deli and bar, all of which are located within the casino facility, which shall be authorized to store and sell alcoholic beverages in conjunction with the operation of the restaurant, deli and bar and in accordance with the provisions of this chapter. The Business Committee shall set the prices of alcoholic beverages sold.

9.40.060 State of Washington licenses and agreements.

The Tribe may negotiate an agreement and/or the licensee may obtain a State of Washington liquor license for any Tribally operated establishment that manufactures or sells alcoholic beverages or conducts transactions involving alcoholic beverages to the extent required by applicable law in order to allow the Tribe to manufacture, sell or otherwise conduct transactions involving alcoholic beverages on the Reservation or in Indian Country under its control.

9.40.070 Applicability of State law.

Except as may be otherwise authorized by agreement between the Tribe and the State of Washington, the Tribe and its agents shall act in conformity with Washington State laws regarding the sale of liquor to the extent required by applicable Federal law, including 18 U.S.C. Section 1161

9.40.080 Persons under 21 years of age – Restrictions.

The Tribe shall comply with the State of Washington's laws regarding restrictions on the sale of alcoholic beverages to persons under the age of 21 years in any Tribal establishment operating pursuant to the provisions of this chapter.

9.40.090 Restrictions on intoxicated persons.

No Tribally operated or licensed establishment shall sell, give, or furnish any alcoholic beverage or in any way allow any alcoholic beverage to be sold, given or furnished to a person who is obviously intoxicated.

9.40.100 Hours and days of sale.

Any Tribally operated or licensed establishment shall sell or furnish alcoholic beverages for on-site consumption only during hours or on days which are in compliance with applicable Washington State law

9.40.110 Power to license and tax.

The power to establish Tribal licenses and levy taxes under the provisions of this chapter is vested exclusively with the Tribe's Business Committee. If the Business Committee enters into any agreements with the State regarding the sale of liquor, the agreement shall be deemed to constitute Tribal Law

9.40.120 Tribally owned establishments.

The Business Committee can issue, by resolution, an appropriate license to a Tribally owned establishment upon determining the site for the establishment and obtaining the necessary licensing or agreement from the State of Washington.

9.40.130 Licensing.

A. The Business Committee shall have the power to issue licenses to any Tribal or State chartered corporation, individual or partnership or other entity to undertake any

manufacture, sale or transaction of alcoholic beverages, including distilleries, breweries, wineries and cideries within the Chehalis Reservation or Indian Country over which the Chehalis Tribe has jurisdiction which the Tribe itself has the power to undertake under this chapter.

B. Applications for a license shall be submitted in the form prescribed by the Business Committee or its authorized employees. The Business Committee may, within its sole discretion and subject to the conditions in this chapter, issue or refuse to issue the license applied for upon payment of such fee as the Business Committee may prescribe.

C. Every license shall be issued in the name of the applicant and no license shall be transferable or assignable without the written approval of the Business Committee, nor shall the licensee allow any other person or entity to use the license.

D. The Business Committee may, for violations of this chapter, suspend or cancel any license. A license is a privilege and no person shall have vested rights therein. Prior to cancellation or suspension of a license, the Business Committee shall send notice of its intent to cancel or suspend the license to the licensee. A licensee whose liquor license is cancelled or suspended by the Business Committee shall be entitled to appeal the cancellation or suspension within 10 days of the receipt from the Business Committee of such notice by filing a notice of appeal with the Clerk of the Tribal Court. The appeal of any such notice shall be determined by the Tribal Court in accordance with the ordinances of the Tribe governing Tribal Court actions and the decision of the Tribal Court, including any appeal within the Tribal Court system, shall be final and binding on the parties.

E. No license issued under this chapter shall be valid for a period longer than one year.

9.40.140 Regulations.

The Business Committee may, consistent with this chapter, adopt regulations it deems necessary to implement this chapter.

9.40.150 Severability.

If any part of this Ordinance, or the application thereof to any party, person, or entity or to any circumstances, shall be held invalid for any reason whatsoever, the remainder of the section or Ordinance shall not be affected thereby, and shall remain in full force and effect as though no part thereof had been declared to be invalid.

9.40.160. Amendment or repeal of ordinance.

This chapter may be amended or repealed by a majority vote of the Business Committee. Any amendment to this Liquor Ordinance shall be published as required pursuant to Federal law.

9.40.170. Sovereign Immunity.

Nothing in this Ordinance is intended, nor shall anything contained in it be construed, as a waiver of the sovereign immunity of the Confederated Tribes of the Chehalis Reservation.

9.40.180. Effective date.

The ordinance codified in this chapter shall be effective upon the date that the Secretary of the Interior certifies the ordinance codified in this chapter and publishes it in the Federal Register.

9.40.190 Jurisdiction, State and Tribal Law.

Notwithstanding anything in this chapter to the contrary, nothing herein is intended, nor shall it be construed, as a grant of jurisdiction from the Confederated Tribes of the Chehalis Indian Reservation to the State of Washington beyond that provided by applicable law. The Tribe shall operate in conformity with State law and Tribal law to the extent provided pursuant to 18 U.S.C. Section 1161.

9.40.200 Tribal Court Jurisdiction.

Jurisdiction for all matters and actions under this Liquor Ordinance, including without limitation, challenges to any portion of this Ordinance and actions revoking any authority to do business on the Chehalis Reservation under this Ordinance, shall lie exclusively with the Chehalis Tribal Court.

9.40.210 Violations of this Ordinance and Any Promulgated Regulations.

Violations of this Ordinance and any promulgated regulations shall be civil violations subject to civil enforcement and penalties except where an individual or entity is either manufacturing, importing, selling or exporting products subject to this Ordinance without having received a liquor license as set forth herein, which such actions shall constitute criminal act(s).

A. Any individual or entity who shall be charged by the Tribe with a civil violation of this Ordinance and / or regulations promulgated under this Ordinance shall have the right to obtain a hearing challenging the claimed violation(s) and / or the penalties to be imposed before the Chehalis Tribal Court.

B. The civil charge shall be commenced by a writing / Notice from the Tribe signed by either the Department Director responsible for administering this Ordinance or the Chairman of the Tribe. The writing shall specify the violation(s), the Ordinance and / or

regulations violated, the opportunity to cure, if any, within a specified timeframe, and the right to appeal.

C. Civil violations of this Ordinance and / or promulgated regulations shall be subject to the potential of cease and desist notices, injunctive relief, and / or fines of \$500.00 and possible suspension of the license for 10 days for the first offense, \$1,000.00 and automatic suspension for 30 days for the second offense, and, if the individual or entity is not a Chehalis Tribal member, license revocation and / or exclusion from the Reservation for any subsequent violation. If exclusion is not an option under the terms of this Ordinance, then for each violation after the second violation, the fine shall increase by \$500.00 and / or license revocation.

D. The request for a hearing challenging the claimed violation(s) and / or penalties shall take the form of a pleading filed with the Tribal Court denominating the challenging party as plaintiff and the Tribe as defendant and the pleading and a summons shall be served under the Tribal Court rules upon the Chairman of the Tribe with a copy to the Office of Tribal Attorney.

E. In order to be heard by the Tribal Court, the aforementioned pleading must be filed and served within 30 days of the end of the period, if any, identified in the writing / Notice as the cure period. This timeframe constitutes a statute of limitation and shall not be tolled.

F. In hearing the appeal, the Chehalis Tribal Court shall follow its normal rules of procedure and the applicability of Chehalis Tribal Law and any other procedural requirements as specified in the Tribal Codes for the Court.

G. All decisions of the Chehalis Tribal Court are final and non-appealable.

H. The burden of proof in any civil proceeding shall be upon the Tribe which, in order to prevail, must be by a preponderance of the evidence.

I. Any allegation that an individual or entity has violated the criminal law with respect to this Ordinance shall be referred to the Tribal Prosecutor of the Tribe for review and if appropriate filing of a criminal complaint.

J. Should the Prosecutor determine to proceed, the Prosecutor shall file a criminal complaint against the Defendant and have the Defendant served.

K. The Tribe's Prosecutor and / or Chief of Police may refer an potential criminal violation to the US Attorney in Seattle provided that if the matter is referred, but the US Attorney shall decline to proceed, then the Prosecutor shall retain the jurisdiction to proceed.

L. All provisions of the Tribe's criminal codes shall apply to this proceeding except that all trials shall be bench trials.

M. Should an individual or entity be found guilty of criminal violations of this Ordinance, then, in the case of an individual, the individual shall be sentenced to not less than 6 months of jail time for a first offense and not less than 11 months and 25 days of jail time for each subsequent conviction. If an entity is found guilty of a criminal violation, then the sentence shall be exclusion from the Reservation.

N. Notwithstanding anything herein to the contrary, a defendant in a criminal matter may appeal any conviction to the Chehalis Court of Appeals pursuant to the rules of the Tribe's Code governing such appeals.

O. Any individual or entity violating the criminal provisions of this Ordinance shall be subject to the search and seizure provisions of the Tribe's criminal code permitting

searches of any premises where there is good cause to believe that a criminal violation is occurring and seizure of any products or equipment involved in the alleged criminal violation(s).

P. Upon trial of a criminal charge, if the Defendant is found guilty, any products or equipment shall be forfeited to the Tribe as part of any sentence.

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